

Bur. of Consumer Financial Protection

§ 1081.210

statement of the basis for the motion to quash or modify the deposition subpoena, and shall be filed and served on all parties pursuant to subpart A of this part. Notwithstanding §1081.205, the party on whose behalf the deposition subpoena was issued or Enforcement Counsel may, within five days of service of the motion, file a response to the motion. Reply briefs are not permitted unless requested by the hearing officer.

(2) *Standards governing motion to quash or modify.* If compliance with the deposition subpoena would be unreasonable, oppressive or unduly burdensome, or the deposition subpoena does not meet the requirements set forth in paragraph (a)(1) of this section, the hearing officer shall quash or modify the deposition subpoena, or may order return of the deposition subpoena only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the deposition subpoena was issued shall make reasonable compensation to the person to whom the deposition subpoena was addressed for the cost of copying or transporting evidence to the place for return of the deposition subpoena.

(g) *Procedure upon deposition.* (1) Depositions shall be taken before any person before whom a deposition may be taken pursuant to the Federal Rules of Civil Procedure (the “deposition officer”).

(2) The witness being deposed may have an attorney present during the deposition.

(3) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Objections to questions of evidence shall be noted by the deposition officer upon the deposition, but a deposition officer other than the hearing officer shall not have the power to decide on the competency, materiality, or relevance of evidence. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All

questions, answers, and objections must be recorded.

(4) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(5) The original deposition and exhibits shall be filed with the Executive Secretary. The cost of the transcript shall be paid by the party requesting the deposition. A copy of the deposition shall be available to the deponent and each party for purchase at prescribed rates.

(h) *Enforcing subpoenas.* Any party may move before the hearing officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition. If a subpoenaed person fails to comply with any order of the hearing officer which directs compliance with all or any portion of a deposition subpoena under this section, the Bureau may, on its own motion or at the request of the party on whose behalf the subpoena was issued, apply to an appropriate United States district court, in the name of the Bureau but on relation of such party, for an order requiring compliance with so much of the subpoena as the hearing officer has not quashed or modified, unless, in the judgment of the General Counsel, the enforcement of such subpoena would be inconsistent with law and the policies of the Act. Failure to request the Bureau to seek enforcement of a subpoena constitutes a waiver of any claim of prejudice predicated upon the unavailability of the testimony or evidence sought.

§ 1081.210 Expert discovery.

(a) At a date set by the hearing officer at the scheduling conference, each party shall serve the other with a report prepared by each of its expert witnesses. Each party shall serve the other parties with a list of any rebuttal expert witnesses and a rebuttal report prepared by each such witness not later

than 28 days after the deadline for service of expert reports, unless another date is set by the hearing officer. A rebuttal report shall be limited to rebuttal of matters set forth in the expert report for which it is offered in rebuttal. If material outside the scope of fair rebuttal is presented, a party may file a motion not later than five days after the deadline for service of rebuttal reports, seeking appropriate relief with the hearing officer, including striking all or part of the report, leave to submit a surrebuttal report by the party's own experts, or leave to call a surrebuttal witness and to submit a surrebuttal report by that witness.

(b) No party may call an expert witness at the hearing unless he or she has been listed and has provided reports as required by this section, unless otherwise directed by the hearing officer at a scheduling conference. Each side will be limited to calling at the hearing five expert witnesses, including any rebuttal or surrebuttal expert witnesses. A party may file a motion seeking leave to call additional expert witnesses due to extraordinary circumstances.

(c) Each report shall be signed by the expert and contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data, materials, or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored or co-authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified or sought to testify as an expert at trial or by deposition within the preceding four years. A rebuttal or surrebuttal report need not include any information already included in the initial report of the witness.

(d) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Unless otherwise ordered by the hearing officer, a deposition of any expert witness shall be conducted after the disclosure of a report prepared by the witness in accordance with paragraph (a) of this section, and at least

seven days prior to the deadline for submission of rebuttal expert reports. A deposition of an expert witness shall be completed no later than 14 days before the hearing unless otherwise ordered by the hearing officer. No expert deposition shall exceed 8 hours on the record, absent agreement of the parties or an order of the hearing officer for good cause shown. Expert depositions shall be conducted pursuant to the procedures set forth in § 1081.209.

(e) The hearing officer shall have the discretion to dispense with the requirement of expert discovery in appropriate cases.

§ 1081.211 Interlocutory review.

(a) *Availability.* The Director may, at any time, direct that any matter be submitted to him or her for review. Subject to paragraph (c) of this section, the hearing officer may, on his or her own motion or on the motion of any party, certify any matter for interlocutory review by the Director. This section is the exclusive remedy for review of a hearing officer's ruling or order prior to the Director's consideration of the entire proceeding.

(b) *Procedure.* Any party's motion for certification of a ruling or order for interlocutory review shall be filed with the hearing officer within five days of service of the ruling or order, shall specify the ruling or order or parts thereof for which interlocutory review is sought, shall attach any other portions of the record on which the moving party relies, and shall otherwise comply with § 1081.205. Notwithstanding § 1081.205, any response to such a motion must be filed within three days of service of the motion. The hearing officer shall issue a ruling on the motion within five days of the deadline for filing a response.

(c) *Certification process.* Unless the Director directs otherwise, a ruling or order may not be submitted to the Director for interlocutory review unless the hearing officer, upon the hearing officer's motion or upon the motion of a party, certifies the ruling or order in writing. The hearing officer shall not certify a ruling or order unless: